

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
Plaintiff,)	8:13CR105
)	
)	
vs.)	
)	
)	
TIMOTHY DEFOGGI,)	
a/k/a fuckchrist)	
a/k/a ptasseater)	
Defendant.)	
)	

**GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS
EVIDENCE OBTAINED THROUGH INTERCEPTION OF ELECTRONIC
COMMUNICATIONS (DKT. NOS. 97-98)**

Prepared and Submitted by:

DEBORAH R. GILG
United States Attorney
for the District of Nebraska

MICHAEL P. NORRIS (#17765)
Assistant U.S. Attorney
1620 Dodge Street, Suite 1400
Omaha, Nebraska 68102-1506
Phone: (402) 661-3700

KEITH BECKER
DOJ Trial Attorney
1400 New York Ave NW 6th Floor
Washington, DC 20530
(202) 305-4104

SARAH CHANG
DOJ Trial Attorney
1400 New York Ave NW 6th Floor
Washington, DC 20530
(202) 353-4979

The United States of America, through undersigned counsel, hereby files this opposition to the Defendant's motion to suppress evidence obtained through interception of electronic communications (Dkt. Nos. 97-98).

On November 18, 2012, upon application of the United States, the U.S. District Court for the District of Nebraska authorized the interception of electronic communications, ultimately including communications of the defendant, in sealed case 8:12-WT-11. A court-stamped copy of the application, order and associated exhibits regarding that authorization will be filed as a sealed attachment to this opposition. The application submitted in connection with that authorization included as an exhibit a copy of a memorandum signed by Kenneth A. Blanco, Deputy Assistant Attorney General for the Criminal Division of the Department of Justice, authorizing the application, as required by 18 U.S.C. § 2518(1)(a). A Deputy Assistant Attorney General for the Criminal Division is empowered to authorize an application for interception of electronic communications pursuant to 18 U.S.C. § 2516(1).

On March 6, 2014, the defendant filed a motion to suppress any and all evidence obtained through the interception of electronic communications authorized in sealed case 8:12-WT-11 (Dkt. Nos. 97-98). The only argument the defendant advances is that suppression is warranted because the application purportedly failed to include a memorandum identifying an official specially designated by the Attorney General of the United States to authorize the application as required by 18 U.S.C. § 2518(1)(a). If that were true, such an omission could warrant suppression of evidence pursuant to United States v. Lomeli, 676 F.3d 734 (8th Cir. 2011).

It appears that a copy of the approval memorandum was inadvertently omitted from discovery documents initially provided to the defendant, through prior counsel, in June of 2013. The United States has subsequently provided court-stamped copies of the application and order,

including the court-stamped copy of the approval memorandum, to the defendant through current counsel. The defendant does not assert any other basis for the suppression of evidence derived from the interception of electronic communications. Accordingly, the United States requests that the Court deny the defendant's motion.

Respectfully submitted,

UNITED STATES OF AMERICA,
Plaintiff

DEBORAH R. GILG
United States Attorney

By: s/ Michael P. Norris
MICHAEL P. NORRIS (#17765)
Assistant United States Attorney
1620 Dodge Street, Suite 1400
Omaha, Nebraska 68102-1506
(402) 661-3700

s/Keith Becker
KEITH BECKER
DOJ Trial Attorney
1400 New York Ave NW 6th Floor
Washington, DC 20530
(202) 305-4104

s/Sarah Chang
SARAH CHANG
DOJ Trial Attorney
1400 New York Ave NW 6th Floor
Washington, DC 20530
(202) 353-4979

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the attorney of record.

s/Michael P. Norris

MICHAEL P. NORRIS

Assistant United States Attorney